

108TH CONGRESS
1ST SESSION

S. 1480

To amend the Buy American Act to increase the requirement for American-made content, to tighten the waiver provisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29 (legislative day, JULY 21), 2003

Mr. FEINGOLD introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend the Buy American Act to increase the requirement for American-made content, to tighten the waiver provisions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Buy American Im-

5 provement Act of 2003”.

6 **SEC. 2. REQUIREMENTS FOR WAIVERS.**

7 (a) IN GENERAL.—Section 2 of the Buy American

8 Act (41 U.S.C. 10a) is amended—

9 (1) by striking “Notwithstanding” and insert-

10 ing the following:

1 “(a) IN GENERAL.—Notwithstanding”; and

2 (2) by adding at the end the following:

3 “(b) SPECIAL RULES.—The following rules shall
4 apply in carrying out the provisions of subsection (a):

5 “(1) PUBLIC INTEREST WAIVER.—A determina-
6 tion that it is not in the public interest to enter into
7 a contract in accordance with this Act may not be
8 made after a notice of solicitation of offers for the
9 contract is published in accordance with section 18
10 of the Office of Federal Procurement Policy Act (41
11 U.S.C. 416) and section 8(e) of the Small Business
12 Act (15 U.S.C. 637(e)).

13 “(2) DOMESTIC BIDDER.—A Federal agency
14 entering into a contract shall give preference to a
15 company submitting an offer on the contract that
16 manufactures in the United States the article, mate-
17 rial, or supply for which the offer is solicited, if—

18 “(A) that company’s offer is substantially
19 the same as an offer made by a company that
20 does not manufacture the article, material, or
21 supply in the United States; or

22 “(B) that company is the only company
23 that manufactures in the United States the ar-
24 ticle, material, or supply for which the offer is
25 solicited.

1 “(3) USE OUTSIDE THE UNITED STATES.—

2 “(A) IN GENERAL.—Subsection (a) shall
3 apply without regard to whether the articles,
4 materials, or supplies to be acquired are for use
5 outside the United States if the articles, mate-
6 rials, or supplies are not needed on an urgent
7 basis or if they are acquired on a regular basis.

8 “(B) COST ANALYSIS.—In any case where
9 the articles, materials, or supplies are to be ac-
10 quired for use outside the United States and
11 are not needed on an urgent basis, before enter-
12 ing into a contract an analysis shall be made of
13 the difference in the cost for acquiring the arti-
14 cles, materials, or supplies from a company
15 manufacturing the articles, materials, or sup-
16 plies in the United States (including the cost of
17 shipping) and the cost for acquiring the arti-
18 cles, materials, or supplies from a company
19 manufacturing the articles, materials, or sup-
20 plies outside the United States (including the
21 cost of shipping).

22 “(4) DOMESTIC AVAILABILITY.—The head of a
23 Federal agency may not make a determination under
24 subsection (a) that an article, material, or supply is
25 not mined, produced, or manufactured, as the case

1 may be, in the United States in sufficient and rea-
2 sonably available commercial quantities and of satis-
3 factory quality, unless the head of the agency has
4 conducted a study and, on the basis of such study,
5 determined that—

6 “(A) domestic production cannot be initi-
7 ated to meet the procurement needs; and

8 “(B) a comparable article, material, or
9 supply is not available from a company in the
10 United States.

11 “(c) REPORTS.—

12 “(1) IN GENERAL.—Not later than 60 days
13 after the end of each fiscal year, the head of each
14 Federal agency shall submit to Congress a report on
15 the amount of the acquisitions made by the agency
16 from entities that manufacture the articles, mate-
17 rials, or supplies outside the United States in that
18 fiscal year.

19 “(2) CONTENT OF REPORT.—The report re-
20 quired by paragraph (1) shall separately indicate the
21 following information:

22 “(A) The dollar value of any articles, ma-
23 terials, or supplies for which this Act was
24 waived.

1 “(B) An itemized list of all waivers grant-
 2 ed with respect to such articles, materials, or
 3 supplies under this Act.

4 “(C) A list of all articles, materials, and
 5 supplies acquired, their source, and the amount
 6 of the acquisitions.

7 “(3) PUBLIC AVAILABILITY.—The head of each
 8 Federal agency submitting a report under paragraph
 9 (1) shall make the report publicly available by post-
 10 ing on an Internet website.”.

11 (b) DEFINITIONS.—Section 1 of the Buy American
 12 Act (41 U.S.C. 10c) is amended—

13 (1) by striking subsection (c) and inserting the
 14 following:

15 “(c) FEDERAL AGENCY.—The term ‘Federal agency’
 16 means any executive agency (as defined in section 4(1)
 17 of the Federal Procurement Policy Act (41 U.S.C.
 18 403(1))) or any establishment in the legislative or judicial
 19 branch of the Government (except the Senate, the House
 20 of Representatives, and the Architect of the Capitol and
 21 activities under the Architect’s direction).”; and

22 (2) by adding at the end the following:

23 “(d) SUBSTANTIALLY ALL.—Articles, materials, or
 24 supplies shall be treated as made substantially all from
 25 articles, materials, or supplies mined, produced, or manu-

1 factured, as the case may be, in the United States, if the
2 cost of the domestic components of such articles, mate-
3 rials, or supplies exceeds 75 percent.”.

4 (c) CONFORMING AMENDMENTS.—

5 (1) Section 2 of the Buy American Act (41
6 U.S.C. 10a) is amended by striking “department or
7 independent establishment” and inserting “Federal
8 agency”.

9 (2) Section 3 of such Act (41 U.S.C. 10b) is
10 amended—

11 (A) by striking “department or independent
12 establishment” in subsection (a), and inserting
13 “Federal agency”; and

14 (B) by striking “department, bureau, agency,
15 or independent establishment” in subsection (b)
16 and inserting “Federal agency”.

17 (3) Section 633 of the National Military Estab-
18 lishment Appropriations Act, 1950 (41 U.S.C. 10d)
19 is amended by striking “department or independent
20 establishment” and inserting “Federal agency”.

21 **SEC. 3. GAO REPORT AND RECOMMENDATIONS.**

22 (a) SCOPE OF WAIVERS.—Not later than 6 months
23 after the date of enactment of this Act, the Comptroller
24 General of the United States shall report to Congress rec-
25 ommendations for determining, for purposes of applying

1 the waiver provision of section 2(a) of the Buy American
2 Act—

3 (1) unreasonable cost; and

4 (2) inconsistent with the public interest.

5 The report shall include recommendations for a statutory
6 definition of unreasonable cost and standards for deter-
7 mining inconsistency with the public interest.

8 (b) WAIVER PROCEDURES.—The report described in
9 subsection (a) shall also include recommendations for es-
10 tablishing procedures for applying the waiver provisions
11 of the Buy American Act that can be consistently applied.

12 **SEC. 4. DUAL-USE TECHNOLOGIES.**

13 The head of a Federal agency (as defined in section
14 1(c) of the Buy American Act (as amended by section 2)
15 may not enter into a contract, nor permit a subcontract
16 under a contract of the Federal agency, with a foreign
17 entity that involves giving the foreign entity plans, manu-
18 als, or other information that would facilitate the manu-
19 facture of a dual-use item on the Commerce Control List
20 unless approval for providing such plans, manuals, or in-
21 formation has been obtained in accordance with the provi-
22 sions of the Export Administration Act of 1979 (50
23 U.S.C. App. 2401 et seq.) and the Export Administration
24 Regulations (15 C.F.R. part 730 et seq.).

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